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FILED
MAY 14 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 1169

SUBURBAN TILE CENTER, INC., A CORPORATION, AND UNITED CONSTRUCTION AND TRADES UNION, LOCAL #102,

Petitioners,

vs.

ROCKFORD BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO, ROCKFORD, ILLINOIS, WINNEBAGO COUNTY, ET AL.,

Respondents.

BRIEF FOR RESPONDENT UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 792, IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 1169.

SUBURBAN TILE CENTER, INC., A CORPORATION, AND UNITED CONSTRUCTION AND TRADES UNION, LOCAL #102,

Petitioners,

vs.

ROCKFORD BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO, ROCKFORD, ILLINOIS, WINNEBAGO COUNTY, ET AL.,

Respondents.

BRIEF FOR RESPONDENT UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 792, IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

This Brief in Opposition is submitted on behalf of the Respondent United Brotherhood of Carpenters and Joiners of America, Local 792 (hereinafter referred to as the "Carpenters").

QUESTION PRESENTED.

Should this Court properly review the decision of th Court below which upheld the validity of a Building an Construction Subcontracting Agreement entered into pur suant to Section 8(e) of the Labor-Management Relation Act, and its subsequent judicial enforcement.[1]

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1. It should be noted that the instant Respondent, while reserv ing all rights thereto, does not herein discuss other issues whic were not decided by the Court of Appeals. As stated by the Cour at page 6 of its Opinion:

> We consider the foregoing to be completely dispositive of thi case, and we, therefore, do not reach the other contention of the various defendants that injuries arising from compliance with an injunction cannot support recovery in a private anti trust suit; that the plaintiff union is a voluntary unincor porated association which is not the real party in interest an which lacks capacity to sue under the anti-trust laws; that th N. L. R. B. has exclusive jurisdiction over conduct allegedl violative of the Labor-Management Relations Act; that th plaintiffs have failed to bring the unnamed local unions affili ated with the Trades Council and their individual member before the Court by service of process; and that the complain fails to allege facts sufficient to give fair notice of the claim against the Contractors' Association or Merle F. Drager, it secretary.

STATEMENT OF THE CASE.[2]

Petitioners, Suburban Tile Center, Inc., and United Construction and Trades Union, Local #102,[3] commenced this action by the filing of a joint Complaint in which the Petitioners sought damages from the Respondents for the alleged violation of the Anti-Trust Laws as well as a temporary and permanent injunction[4] (JA. pp. 6-39). In addition, Suburban Tile sought damages against the Respondent labor organizations for alleged violations of the Labor-Management Relations Act, as amended[5] (JA. pp. 25-30).[6]

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2. All joint Appendix Citations are herein referred to as "(JA. p. ....)".

3. The Petitioner, Suburban Tile Center, Inc., (hereinafter refered to as "Suburban Tile"), is alleged as a corporation which was a sub-contractor engaged in the installation of tile at the Presidential Courts Project (JA. p. 7). The Petitioner, Local 102, United Construction and Trades Union, (hereinafter refered to as "Local 102"), is alleged as a labor organization having a collective bargaining agreement with Suburban Tile (JA. p. 28).

4. 15 USC § 1 *et seq.*

5. The Respondent Rockford Building and Construction Trades Council, (AFL-CIO), (hereinafter referred to as the "Trades Council"), is alleged as a voluntary unincorporated association consisting of representatives of about twenty local unions, including the Respondent United Brotherhood of Carpenters and Joiners of America, (AFL-CIO), (hereinafter referred to as the "Carpenters"), and Marble, Tile and Terrazzo Workers, Local 31, (hereinafter referred to as "Local 31") (JA. pp. 9, 10). In addition, another Respondent, Suarez Brothers Construction Co., Inc., (hereinafter referred to as "Suarez Brothers") was the general contractor on the Presidential Courts Project who sublet the tile installation work to the Petitioner, Suburban Tile (JA. pp. 10-12).

6. 29 USC § 141 *et seq.*

Findings of the Court Below.[7]

The Court found that all three Counts of the Complaint were concerned with a Building and Construction Industry Subcontracting Agreement entered into between the Respondent Trades Council and the Association[8] pursuant to the provisions of Section 8(e) of the Labor-Management Relations Act, as amended (Op. p. 2).

As stated by the Court at page 4 of its Opinion:

> Section 158(e) as amended in 1959 does make it an unfair labor practice for a labor organization and an employer to agree to cease doing business with another employer. But a proviso to that section specifically excludes "an agreement between a labor organization and an employer in the construction industry relating to contracting or subcontracting of work to be done at the site of the construction * * * of a building, structure, or other work * * *." It thus appears that for the construction industry, Congress has approved such contracts as the one now before us.

The Court further held, and as the Petitioners admit,[9] any contractor who desired, including Suburban Tile, could become a party to the Construction Industry Agreement (Op. pp. 5-6; JA. pp. 68-70; Pet. 16).[10]

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7. The Opinion of the Court below is printed in its entirety in the Appendix hereof (Pages 1 through 6). All such references to the Opinion shall be "(Op. p. ....)". The opinion is also reported in 354 F. 2d 1 (CA 7, 1965).

8. The Respondent Building Contractors Association of Rockford, Inc., (herein referred to as the "Association") is alleged as an Illinois Corporation, comprised of various contractors and subcontractors (JA. p. 10).

9. All references to the Petition for Writ of Certiorari shall be "(Pet. ....)".

10. The specific provision of the Agreement as alleged in the Complaint provided that:

> Any contractor not a member of any employer association may receive the benefits and assume the obligations of this agreement by and with the council by signing an exact copy of this agreement. (JA. pp. 68-70.)

Additional Facts.

On May 6, 1963 Suarez Brothers, the general contractor, subcontracted the installation of tile at the Presidential Courts Project to Suburban Tile (Op. p. 3; JA. p. 12).

Thereafter, on June 21, 1963, Suarez Brothers, who was not a member of the Association, became a party to a Construction Industry Subcontracting Agreement with the Trades Council[11] (Op. p. 3; JA. pp. 55-58).[12]

After Suarez Brothers signed that Agreement, the Trades Council sought and obtained an injunction in the Circuit Court of Winnebago County (JA. pp. 40-52, 22, 59-60). As stated by the Court at page 4 of its Opinion:

> Thereafter, the Trades Council sought and secured a court injunction from the Circuit Court of Winnebago County, Illinois, permanently enjoining Suarez Bros. from hiring or subletting work to persons or firms having no collective bargaining agreement with the Trades Council or its union affiliates. Suarez Bros. then directed plaintiff Suburban Tile to cease doing the work at the Presidential Courts Project site.

The decree was entered on June 28, 1963 and accordingly, on the following day, June 29, 1963, Suburban Tile was notified by Suarez Brothers to cease doing work at the construction site (Op. p. 4; JA. pp. 39, 59-60; Pet. 10-11).

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11. As stated by the Court:

> The plaintiffs assert that defendant Suarez Brothers Construction Co., Inc., (hereinafter sometimes called "Suarez Bros.") became a party to the alleged unlawful conspiracy by signing what was in effect an exact duplicate of the agreement on or about June 21, 1963. There was a prior similar collective bargaining agreement entered into between Suarez Bros. and the Trades Council on November 9, 1962, with reference to "the construction of apartment buildings project, west of Machesney Airport, Rockford, Illinois."

12. The Court referred in its opinion to Suburban Tile's assertion that because of threats of such steps as work stoppages and law suits by members of the local Unioins affiliated with the Trades Council, Suarez Brothers entered into the above mentioned agreement on June 21, 1963 (Op. p. 3).

REASONS FOR NOT GRANTING THE WRIT.

The Decision in This Case Is Consistent With the Decisions of This Court and Lower Federal Courts.

The Petition for Writ of Certiorari is predicated upon an alleged conflict between the instant decision and certain decisions of this Court and of other courts. The Opinion of the Court of Appeals, however, shows that no such conflict exists and that this case and the cases cited by Petitioners were decided upon precisely the same principles of law.

Both the District Court and the Court of Appeals were confronted with a Complaint alleging damages arising from a Building and Construction Industry Subcontracting Agreement entered into pursuant to the Construction Industry Proviso of Section 8(e) of the Labor-Management Relations Act, as amended, and its subsequent judicial enforcement.

The Court below concluded that pursuant to the Proviso to Section 8(e), Congress has permitted subcontracting agreements in the construction industry and that such an agreement was before the Court (Op. p. 4). Oddly enough, the Petitioners conveniently omitted that Proviso from the allegations of their Complaint (JA. pp. 29-30).

The Court further held that based upon said agreement the Trades Council sought and secured an injunction in the Circuit Court of Winnebago County, Illinois, to restrain the general contractor, Suarez Brothers, from continuing to subcontract the tile installation work to the Petitioner, Suburban Tile (Op. p. 4; JA. pp. 40-52, 22, 59-60). Accordingly, Suarez Brothers then terminated Suburban Tile's subcontract and Suburban Tile and its Union, Local 102, left the job (JA. p. 39).

The Petitioners attempt to demonstrate that the instant decision is inconsistent with *Allen Bradley* and other deci-

sions of this Court. However, the Court below fully contemplated *Allen Bradley* as it specifically related to the allegations of the complaint at pages 5-6 of the Opinion as follows:

> In the plaintiffs' view the contractors enjoy a benefit from these agreements in that competition from outside contractors is limited by them. However, *the agreements all provide that any contractor or sub-contractor may enter into similar collective bargaining agreements.* In *Allen Bradley,* a complete monopoly was achieved (325 U. S. 800); that is not the case here. *On the other hand, opportunities for employment of members of non-affiliated unions are limited to the advantage of the members of the defendant unions.* We believe that the plaintiffs' reliance on Allen Bradley is misplaced. (Emphasis Supplied.)

As found by the Court below, these agreements all provided that any contractor or subcontractor, including Suburban Tile, could assume the obligations and receive the benefits thereunder by signing same (Op. pp. 5-6; JA. pp. 68-70).

Suburban Tile was affected by the agreement only because of its relationship with its own Union—Local 102. This was simply a question of competition between the AFL-CIO affiliated unions and the non-affiliated union, Local 102. As Suburban Tile itself admits, it did not desire to become a signatory to the Building and Construction Industry Subcontracting Agreement herein because of its own Local Union, Local 102 (Pet. 16, 20).

Moreover, unlike questions which were presented in recent decisions of this Court as cited by the Petitioners,[13] the Construction Industry Subcontracting Agreement is a mandatory subject of collective bargaining. As stated by the Court below in its Opinion at page 6:

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13. *United Mine Workers of America* v. *Pennington,* et al., 381 U. S. 657, (1965); and *Meat Cutters Union, et al.,* v. *Jewel Tea Company, Inc.,* 381 U. S. 676 (1965).

> A construction subcontracting agreement has been held to be a mandatory subject of collective bargaining. *Orange Belt District Council of Painters No. 48* v. N. L. R. B., D. C. Cir., 1964, 328 F. 2d, 534, 537; *Building and Construction Trades Council of San Bernadino & Riverside Counties* v. *N. L. R. B.;* D. C. Cir., 1964, 328 F. 2d 540.

In addition, the effect of these agreements on "non-union contractors" is fully contemplated by the law. As stated by Senator Kennedy in the Congressional Record, 105 Daily Cong. Rec. 16415, September 8, 1959:

> Agreements by which a contractor in the construction industry promises not to subcontract work on a construction site to a *non-union contractor* appear to be legal today. They will not be unlawful under Section 8(e). The proviso is also applicable to all other agreements involving undertakings not to do work on a construction project site with other contractors or subcontractors regardless of the precise relation between them. . . . (Emphasis Supplied.)

Finally, the Petitioners assert that the instant decision is in conflict with a decision of the Second Circuit and another decision of this Court.[14] However, contrary to the facts in those cases and as found by the Court below, what was involved herein was nothing more than an 8(e) Construction Industry Subcontracting Agreement, secured by activity permitted by the law[15] and enforced by judicial decree as

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14. *National Labor Relations Board* v. *International Brotherhood of Teamsters, et al.,* 342 F. 2d 19 (C. A. 2d, 1965); *United Brotherhood of Carpenters and Joiners, et al.,* v. *N. L. R. B.,* 357 U. S. 93, (1958).

15. As the Court below held at page 5 of its Opinion:
Economic action to secure such agreements has been allowed. *Essex County and Vicinity District Council of Carpenters etc.,* v. *N. L. R. B.,* 3 Cir., 1964, 332 F. 2d 636, 641, *Construction Production & Maintenance Laborers Union Local 383* v. *N. L. R. B.,* 9 Cir., 1963, 323 F. 2d 422, 425.

fully contemplated by the Labor-Managementn Relations Act, as amended.[16]

Under a claim of conflict with other decisions, Petitioners merely seek an additional review of the pleadings concerning the determination of the District Court which was unanimously affirmed by the Court of Appeals. This case is not an appropriate one for certiorari since it represents application of a statute—Section 8(e) Construction Proviso —to the allegations of the Complaint which clearly on its face comes within the protection of said Proviso.

Moreover, the determinations of the Court of Appeals and the District Court were firmly supported by the briefs and arguments of all parties. The Petition presents no valid ground specified in Rule 19 for issuance of the Writ.

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16. The judicial enforcement of the agreement was contemplated by Congress when it passed the Construction Industry Proviso to Section 8(e). As stated by the Extension of Remarks introduced by Senator Goldwater in the Congressional Appendix, September 24, 1959, A.8359:

> But a Building-Trades Union may enter into a contract with a contractor—building contractor—whereby he agrees that he will not let the work to any subcontractor who is non-union. This is not illegal. Now here's what it may do:
>
> *The Union may go into a Court and sue him if he fails to live up to that agreement. . . .* (Emphasis Supplied.)

CONCLUSION.

For the reasons stated herein, the Respondent Carpenters request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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